

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 14605, of Wilma Wolfe Roumel and Milton D. Andrews, pursuant to 11 DCMR 3200.2 and 3105.1, from a decision of the Zoning Administrator dated February 2, 1987, in construing 11 DCMR 202.2 to authorize use of a residence as an office of a physician by a psychologist licensed in the District of Columbia, in an R-1-B District at premises 5357 MacArthur Blvd., N.W., (Square 1440, Lot 50).

HEARING DATE: September 30, 1987
DECISION DATE: November 4, 1987

FINDINGS OF FACT:

1. Appellants appeal from the decision of Joseph Bottner, then Acting Zoning Administrator, dated February 2, 1987, that Halcyone H. Bohen ("Bohen"), as a licensed psychologist, is qualified to use her dwelling to practice her profession as a family therapist, pursuant to 11 DCMR 202.2.

2. The Acting Zoning Administrator concluded that a licensed psychologist who practices as a family therapist meets the definitions of "physician" as "a person skilled in the art of healing" and "one duly authorized to treat disease," as set forth in Webster's Unabridged Dictionary.

3. It is undisputed that Bohen is a licensed psychologist, and resides and conducts a practice as a family therapist at 5357 MacArthur Boulevard, N.W. Nor do the appellants contend that Bohen does not meet the requirements of paragraphs (a) through (c) of 11 DCMR 202.2.

4. The February 2, 1987 decision of the Acting Zoning Administrator is consistent with the long-standing administrative practice of the Zoning Administrator in the application of 11 DCMR 202.2 subsequent to its adoption in 1958 as Section 3101.52 of the Zoning Regulations.

5. 11 DCMR 202.2 reads as follows:

202.2 The use of office by a physician or dentist residing on the premises shall be permitted as an accessory use in an R-1 district incidental to the uses permitted in this chapter; Provided, that the following requirements shall be met:

- (a) No goods, chattel, wares, or merchandise shall be created commercially, exchanged, or sold in the office;
- (b) Exclusive of domestics, not more than two (2) persons who do not reside on the premises may be employed. Neither person employed shall be a physician or dentist; and
- (b) Only one (1) sign not over one square foot (1 ft.²) in area and affixed to the dwelling shall be used. The sign, if illuminated, shall be white and nonflashing.

6. Webster's Unabridged Dictionary defines physician as follows:

- (1) : a person skilled in the art of healing one duly authorized to treat disease : a doctor of medicine - often distinguished from surgeon
- (2) : one who restores (as a troubled spirit or the body politic) : one exerting a remedial or salutary influence (a - of the soul) (nature as a -)
- (3) obs: NATURAL PHILOSOPHER, PHYSICIST.

7. According to "Explanatory Notes" in Webster's Unabridged Dictionary at page 19a, a bold-faced colon precedes each discrete definition. Thus, the following phrases are three separate definitions: "a person skilled in the art of healing"; "one duly authorized to treat disease"; and "a doctor of medicine - often distinguished from surgeon". They are not components of a single definition.

8. Nothing before the Board suggests that the Zoning Administrator would extend 11 DCMR 202.2 to include one who claimed to qualify as a physician of the soul or restorer of troubled spirits. In any event, Bohen's qualification as a physician is grounded upon objective criteria, that is, her license and type of practice.

CONCLUSIONS OF LAW:

1. 11 DCMR 199.8 provides that words not defined in section 199 shall have the meanings given in Webster's Unabridged Dictionary.

2. The term "physician" may reasonably be understood and applied to include any of the three separate definitions which are set forth in Finding of Fact numbered 7, at least in respect to the particular therapy practice of Bohen as a licensed psychologist.

3. The additional definitions of "physician" as set forth in Finding of Fact numbered 6 are not at issue in this case.

4. A reasonable decision of the Zoning Administrator should not be reversed simply on the ground that, if stretched too far, an unreasonable application of it could eventually result.

5. Nothing before the Board enables it to determine whether the Zoning Commission in 1958 specifically intended to include a licensed psychologist who has a therapeutic practice within the meaning of the term "physician" for purposes of 11 DCMR 202.2. The specific inclusion of "dentist" would just as reasonably have been based upon precautionary drafting as on an implicit recognition that the term "physician" would be limited to a "doctor of medicine".

6. The Zoning Commission did unequivocally intend to, and explicitly did, provide that Webster's Unabridged Dictionary would be the source for the meaning of otherwise undefined terms.

7. On their face and as applied to the facts of this case, it does no violence to the inherent integrity of the Zoning Regulations to allow "a person skilled in the art of healing" and "one duly authorized to treat disease" to establish an accessory use pursuant to 11 DCMR 202.2.

8. Because the long-standing administrative practice of the Zoning Administrator is not unreasonable on its face, or as applied, the Board concludes that it should be sustained, on the facts of the case before the Board.

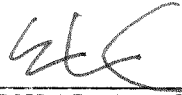
9. On September 16, 1988, Zoning Commission Order No. 557 became effective. In that order, the Zoning Commission adopted a new provision, 11 DCMR 202.3, to define "physician" for purposes of 11 DCMR 202.2 as "only a person who practices medicine". This more restrictive amendment does not apply to Bohlen's accessory use at 5357 MacArthur Blvd., because that use was established before September 16, 1988. Nor does the 1988 amendment cast any useful light on the intention of the Zoning Commission in 1958.

Accordingly, it is ordered that the appeal is DENIED and the decision of the Zoning Administrator is UPHOLD.

VOTE: 5-0 (Maybelle Taylor Bennett, Charles R. Norris, William F. McIntosh, Paula L. Jewell, and Carrie L. Thornhill, to deny and uphold).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: _____

FEB 17 989

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

14605appeal/LJP46

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 14605

As Acting Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a copy of the Order of the Board in the above numbered case, said Order dated FEB 17 1961, has been mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Wilma Wolfe Roumel
5335 MacArthur Blvd., N.W.
Wash, D.C. 20016

Milton D. Andrews
5355 MacArthur Blvd., N.W.
D.C. 20016

Dr. Halcyone H. Bohen
5357 MacArthur Blvd., N.W.
D.C. 20016

Stephan T. Vitas
2803 Cortland Pl., N.W.
D.C. 20008

A handwritten signature in dark ink, appearing to read "ELC", is written over a horizontal line. The signature is stylized and fluid.

EDWARD L. CURRY
Executive Director

DATE: FEB 17 1961